

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.2470 OF 2005

JUDGMENT:

This appeal is preferred by the petitioner in O.P.No.350 of 1999 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Mahabubnagar (*for short, 'the Tribunal'*), dissatisfied with the award dated 30-12-2004 granting a sum of Rs.60,000 towards compensation as against Rs.1,00,000/- claimed by the petitioner under Section 166 of the Motor Vehicles Act, 1988 (*for short, 'the Act'*).

2. The appellant herein is the petitioner before the Tribunal, while respondent Nos.1 and 2, are the owner and insurer of the Lorry bearing No.KA/33-M/236, respectively.

03. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

04. The factual background of the case is that on 03-11-1998 the petitioner was traveling in jeep bearing No.KA/33-M 236 from Utkoor to go to Makthal, when the said jeep reached near cotton mill in the limits of Makthal, the driver of said jeep drove the same at high speed in a rash and negligent manner and dashed against jeep bearing No.AK-D/M-296 which was coming in opposite direction. As a result, petitioner and other passengers sustained injuries. The petitioner was immediately shifted to Government hospital, Mahabubnagar for treatment.

The police Makthal registered a case in Cr.No.80/98 under Section 338 IPC against the driver of jeep bearing No.KA-33/M 236. It is further stated that the petitioner sustained fracture of right leg, right knee and other injuries all over the body. Due to grievous injuries, petitioner was referred to Osmania General Hospital, Hyderabad for expert treatment on 04-11-1998. He was treated as inpatient till 17-1-1998. His leg was operated on 08-11-98. The petitioner incurred medical expenditure for a sum of Rs.25,000/-. The petitioner was working as Head Master in Zilla Parishad High School, Utkoor. During the period of treatment, petitioner could not attend his duties, due to which he suffered loss of salary. Therefore, petitioner is claiming compensation of Rs.1,00,000/- under all heads from respondents 1 and 2 being the owner and insurer of jeep bearing No.KA-33M/236.

05. Respondent No.1 remained exparte. Respondent No.2 filed counter denying all the averments made in the petition regarding age, income and avocation of petitioner at the time of accident. Respondent No.2 denied the factum of accident, rash and negligent driving of the driver of jeep bearing No.KA33M/236 and the grievous injuries sustained by the petitioner in the said accident. It is further contended that the petitioner travelled in the offending vehicle as fare paying passenger at the time of accident. As such, he is not entitled for compensation and sought for dismissal of petition.

06. Basing on the above pleadings, the Tribunal has framed the following issues for trial:

- i) Whether the accident occurred on 03-11-1998 at 8 pm, near cotton mill, in the limits of Makthal, due to rash and negligent driving of jeep bearing No.KA-33/M-236 by its driver, and whether it resulted in causing injuries to the petitioner?
- ii) Whether the petitioner is entitled for compensation? If so, to what amount, and from whom?

07. Since the appeal is regarding the enhancement of compensation, the only issue that is required to be considered is enhancement of compensation, as other issues are in favour of the appellant.

08. Heard learned Standing Counsel for respondent-Insurance Company.

09. The Tribunal basing on the evidence of PW.1 who was claimant himself and Exs.A1 to A12 and Ex.B.1 granted in all Rs.60,000/- i.e. Rs.15,000/- towards pain and suffering, Rs.10,000/- towards medical expenditure and Rs.5,000/- towards extra nourishment, transportation and Rs.30,000/- towards loss of earnings while he was taking treatment.

10. The Tribunal found that though the petitioner claimed that he spent Rs.25,000/- for medical expenditure, there was no evidence produced by him to show that he underwent surgery. Though Ex.A-8 disability certificate is filed, but no one was examined regarding the same. Ex.A.2 wound certificate goes to show that he has suffered injury. In view of the same, this Court is of the opinion that amount granted towards extra-

nourishment and transportation is required to be enhanced to Rs.15,000/- from Rs.5,000/- and medical expenditure from Rs.10,000/- to Rs.20,000/- and the same are granted. The Tribunal has granted Rs.30,000/- under the head of loss of earnings and Rs.15,000/- towards pain and suffering and the same are maintained.

11. Thus, the petitioner is entitled to a total amount of Rs.80,000/- (Rs.15000+20,000/-+Rs.30,000/-and Rs.15,000/-) towards compensation.

12. Accordingly, the appeal is partly allowed granting compensation of Rs.80,000/- as against Rs.60,000/-, awarded by the Tribunal and the same is accordingly granted. The petitioner is entitled to interest on the enhanced compensation at 7.5% per annum from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**¹. There shall be no order as to costs. As a sequel, miscellaneous applications, if any, pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

02-04-2019

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¹ 2013 ACJ 1403 = 2013 (4) ALT 35